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The Price of a Lie

### **Original Citation**

Swaby, Gerald (2012) The Price of a Lie. In: Insurance Law Reform Association Meeting, April 2012, Norton Raod Solicitors, London.

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# The Price of a Lie: Discretionary flexibility in Insurance Fraud

by  
Gerald Swaby

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Australia

Insurance Contracts Act 1984 s. 56



*(2) In any proceedings in relation to such a claim, the court may, if only a **minimal or insignificant** part of the claim is made fraudulently and non-payment of the remainder of the claim would **be harsh and unfair**, order the insurer to pay, in relation to the claim, such amount (if any) as is just and equitable in the circumstances.*

*(3) In exercising the power conferred by subsection (2), the court shall have regard to the need to deter fraudulent conduct...*

# ALRC Report 20

*“\$3000 lost baggage would usually be met even if a fraudulent claim that a camera worth \$200 was included in that baggage was rejected.”*

Quantitatively = 6%

*ALRC in its notes to its draft Bill referred to fraud of A\$100 in a claim of A\$10,000, and the Explanatory Memorandum leading to the Act referred to fraud of A\$50 in a claim of \$100,000.”*

Quantitatively 1% and 0.05%

*Ricciardi v Suncorp Insurance Ltd* [2001] QCA 190.

Held – House fire – Not minimal or insignificant. = 30-50%

*Tiep Thi To v Australian Associated Motor Insurers Ltd* [2001] VSCA 48

Held: Stolen car. Entire claim tainted.

*Entwells Pty Ltd v National and General Insurance Co Ltd* (1991) 6  
WAR 68

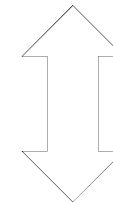
Held

- C's directors had connived with 3<sup>rd</sup> party to set fire to C's building to claim for the building and stock.
- Entire claim tainted.

# Quantitative – Initial claims genuine

- Galloway – Burglary, 11%
- Direct Line v Khan – Fire, 10%
- Gottlieb –
  - 1. Dry rot necessitating alternative accommodation, 33% and
  - 2. An electrician's invoice, 8%
- Micro Design Group – forged documents, 2%

## **Grey Area**



- Tonkin – Fire. Claimed for new kitchen twice, 0.3%

# Qualitative

- Aviva v Brown
- Sharon's Bakery v Axa

# A possible FOS solution to Aviva v Brown

- FOS focus on the insurers ultimate liability, based on the *Mercandian Continent*.
- Aviva v Brown –
  - C would recover.
  - C would not be induced by the misrep.
  - C's ultimate liability would be to pay for D's alternative accommodation.
  - Additional possibility for FOS to award compensation for distress caused by C?